

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 645 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

BABUJI GALABAJI KOLI

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 22/12/97

ORAL JUDGEMENT (Per Patel, J.)

The State has preferred this appeal against the order of acquittal recorded by learned Additional Sessions Judge, Banaskantha in Sessions Case No. 162 of 1997 on 19.4.1996 where the accused was tried for offences punishable under sections 302, 449 and 506 (2) of the Indian Penal Code and under section 37 (1) read with section 135 of the Bombay Police Act.

2. Earlier, the matter was placed for admission but the learned Additional Public Prosecutor appearing for

the State requested the Court to grant time so as to give him an opportunity to go through the record. He has gone through the record.

3. From the record, it transpires that the deceased and accused were friends. It is alleged that during the night hours, the deceased went to the house of the accused for consuming liquor, and at that time, he played some foul jokes with Jyotsna, the daughter of the accused. It is alleged that on account of this, accused committed the offence of murder. With a view to prove this motive, one Devchand Kantilal PW.7 has been examined, who happens to be the brother of the deceased. However, this witness has not deposed about the incident in question. One Rameshji Pratapji PW.6 has also been examined, who happens to be a relative of the accused, and he has also not supported the prosecution. Thus, Devchand Kantilal PW.7 and Rameshji Pratapji PW.6 have not supported the prosecution version. PW.2 Mukeshkumar Naranbhai Thakkar and PW.4 Hakmabhai Shivabhai have also not supported the prosecution. Learned Judge has rightly not placed reliance on the evidence of the witnesses. There are other witnesses also, whose evidence have been discussed in detail by the learned Judge, and it appears that the witnesses have been declared hostile. Learned Additional Public Prosecutor ultimately submitted that evidence of Nagjibhai Velaji PW.10 ought to have been accepted, and the learned Judge ought to have come to the conclusion that the accused is guilty. So far as this witness is concerned, it is not clear from his evidence whether at the place the deceased was sleeping was provided with any light or not. Even in the panchnama, this aspect is not clear. This witness has also not stated that when he woke up, whether there was light or not. On the contrary, he has admitted in the cross-examination that his eye sight is weak. Even from the evidence, it is not clear whether this witness could have seen the incident from the place where he was sleeping. This witness was not threatened by anyone much less the accused. There is no reasonable explanation as to why he has not disclosed the facts to any independent witness. Further, learned Judge has observed that the statement of this witness was recorded in connection with the crime in question, and thereafter he has been posed as an eye witness. With a view to see that he is accepted as an eye witness, a story is put forward by the prosecution that he was sleeping in the night hours. If he would have seen the incident in question, he would have definitely conveyed the same to Ahmedbhai Karshnaji or Devchandbhai Kantilal, the complainant. Further, for a period of two days, he was in the lock up and the

learned Judge has observed that though he was beaten for two days, he has specifically stated that he was not aware about the incident in question. That clearly indicates that he is not an eye witness. If at all he had seen the incident in question, no one prevented him from making a statement before the police soon after his arrest but for two days, no statement is made by the witness before the police. It appears that the learned Judge has not committed any error in rejecting the evidence of this witness.

4. Learned Additional Public Prosecutor could not point out any flaw in the judgement except what is referred to hereinabove.

5. For the reasons recorded above, we find that the decision of the learned trial Judge requires no interference and we are in agreement with the findings and conclusion arrived at by the learned Judge. We are, therefore, not discussing the evidence of each witness in detail in view of the observations made by the Honourable Supreme Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417, which reads as under:-

" This Court has observed in *Girija Nandini Devi v. Bigendra Nandini Choudry* (1967) 1 SCR 93 : (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice"

In the result, the order of acquittal is hereby confirmed.

The appeal is dismissed.

csm./ -----